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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,350	05/08/2007	Shigenobu Yamashita	SATO-136NP	1807

23995 7590 12/16/2009  
RABIN & Berdo, PC  
1101 14TH STREET, NW  
SUITE 500  
WASHINGTON, DC 20005

EXAMINER
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LATHAM, SAEEDA MONEE

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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12/16/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/586,350	<b>Applicant(s)</b> YAMASHITA, SHIGENOBU	
	<b>Examiner</b> Saeeda Latham	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.  
     4a) Of the above claim(s) 1-22 and 24-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/14/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Group IX, claim 23 in the reply filed on 11/17/2009 is acknowledged.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rodelyn (article, Sauted Kangkong) in view of Maung (article, Cooking Oil Consumers Turn to Grease).**

4. Claim 23 relates to a fish oil processed food. Rodelyn teaches a recipe for sauted kangkong (swamp cabbage), which is considered ipomoea aquatica (Title). The ingredients include using cooking oil. The preparation involves washing the kangkong (see Preparation 1).

5. Rodelyn does not teach using fish oil. Maung teaches cooking oil. Consumers are using fish oil as a replacement because it is cheaper and a healthier alternative.

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It would have been obvious to one having ordinary skill in the art at the time of the invention to have utilized fish oil as taught by Maung to prepare the sauted kangkong of Rodelyn by using inexpensive ingredients that result in a healthy food product.

6. **Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al., USPGpub 20020006872 in view of Rodelyn (article, Sauted Kangkong).**

7. Claim 23 relates to a fish oil processed food. Suzuki teaches a plant-activating agent that improves efficiently of the activity of plants (abstract). This agent is sprayed onto phylloplanes, soil, water-introduction into soil, irrigated into soil and the like, or a method of adding to a culturing solution of hydroponics etc [0001]. The agent includes lipids such as fish oil [0076]. Plants that are treated are leaf vegetables such as a Chinese cabbage, greens for pickling, a *Brassica campestris* (a Chinese spinach-like green vegetable, which is considered *ipomoea aquatica* [0129].

8. Suzuki does not teach the processed food. Rodelyn teaches a recipe for sauted kangkong (swamp cabbage), which is considered *ipomoea aquatica* (Title). The preparation involves washing the kangkong (see Preparation 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have improved the growth of the *ipomoea aquatica* by adding an agent containing fish oil as taught by Suzuki to efficiently cultivate the plant and subsequently prepare the sauted kangkong of Rodelyn.

9. **Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shin et al., USPN 5084289 in view of Kiso et al., JP 2004250344.**

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10. Claim 23 relates to a fish oil processed food. Shin teaches a method for inhibiting the oxidation of edible oils and fats by admixing a water-soluble antioxidant (abstract). The problem is oxidative deterioration (discoloration, vitamin destruction) decreases quality and nutritive value of oils (column 1, lines 19-22). Preferred are natural antioxidants such as plant extracts (column 1, lines 30-34). Shin teaches natural antioxidants such as ascorbic acid, rosemary extract, delta-tocopherol are used to inhibit the oxidation of fish oil (column 2, lines 28-31).

11. Shin does not teach using an extract from *ipomoea aquatica*. Kiso teaches an extract of the *ipomoea* plant that is used as an antioxidant in food that has an active oxygen elimination effect and a radical elimination effect [0010, 0012]. The *ipomoea* plant preferred is the water convolvulus, *ipomoea aquatica* Forsk [0018]. Kiso teaches food that can contain a blend of *ipomoea* extract such as oils and fats and oil and fat processed food [0038]. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated an extract of *ipomoea* plant in oil as Kiso to process the fish oil of Shin and effectively inhibit the oxidation of fish oil.

12. Claim 23 is considered a product-by-process claim. The cited prior art teaches all of the positively recited composition of the claimed product. The determination of patentability is based upon the composition itself. The patentability of a product or apparatus does not depend on its method of production or formation. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different

process. See *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (see MPEP § 2113).

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeeda Latham whose telephone number is 571-270-1154. The examiner can normally be reached on Monday to Thursday 8:00AM - 5:00PM EST.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rena L. Dye/  
Supervisory Patent Examiner, Art  
Unit 1794

/S. L./  
Examiner, Art Unit 1794

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